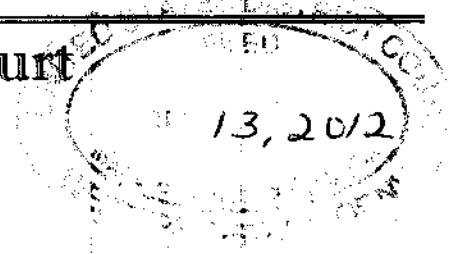


United States District Court
for the
Western District of New York



United States of America)

v.)

Case No. 12-M- 128)

BRIAN AVERY SMITH)*Defendant***CRIMINAL COMPLAINT**

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

Between approximately December, 2011 through March, 2012, in the Western District of New York, the defendant violated Title 18, United States Code, Sections 1344(1) and 1344(2), offenses described as follows:

Knowingly executing a scheme and artifice to defraud a financial institution and to obtain money, funds, credits, assets, securities and other property owned by and under the custody and control of a financial institution by means of false and fraudulent pretenses, representations and promises.

This criminal complaint is based on these facts:

SEE ATTACHED AFFIDAVIT

☒ Continued on the attached sheet.

*Complainant's signature*Brendan M. Donlan, Special Agent, FBI*Printed name and title*

Sworn to before me and signed in my presence.

Date: September 13, 2012

Judge's signature

City and State: Buffalo, New York

H. KENNETH SCHROEDER, JR.
United States Magistrate Judge

Printed name and title

AFFIDAVIT

Brendan M. Donlan, being duly sworn, deposes and says:

INTRODUCTION

1. I am a Special Agent of the Federal Bureau of Investigation (FBI) and have been so employed for approximately three years. I am currently assigned to the Buffalo Field Office and to the White Collar Crime Squad within that office. My duties include the investigation of such offenses as public corruption, investment fraud, money laundering, bank fraud, bankruptcy fraud, corporate fraud, mail fraud, wire fraud and other white collar crimes. The FBI is an agency within the United States Department of Justice, which is a department within the executive branch of the United States Government.

2. I make this Affidavit in support of an application for a Criminal Complaint charging Brian Avery Smith (SMITH) with knowingly executing a scheme to defraud Pentagon Federal Credit Union (Penfed) and with knowingly executing a scheme and artifice to obtain money, funds, and credits, owned by and under the custody and control of Penfed by means of false and fraudulent pretenses in violation of Title 18, United States Code, Sections 1344(1) and 1344(2). Bank Fraud is a matter within the jurisdiction of the executive branch of the United States Government.

3. Because this Affidavit is submitted for the purpose of establishing probable cause to support the issuance of a Criminal Complaint, I have not included each and every fact known by the government concerning this investigation. This Affidavit includes information known to your Affiant and information provided to your Affiant by other Agents who participated in the investigation discussed herein and from other sources.

DETAILS OF INVESTIGATION

4. The offenses charged in this complaint involve a scheme to defraud Penfed, perpetrated by SMITH and other individuals located in the Western District of New York and elsewhere. At all times relevant to this complaint, Penfed was a federally insured financial institution. This scheme was perpetrated while SMITH was serving a probationary sentence, as a result of his previous violation of Title 18, United States Code, Section 1343 (Wire Fraud). SMITH was convicted of that offense in July 2010, in the Eastern District of Missouri, and was sentenced to five years probation, which was transferred to the Western District of New York, where SMITH currently resides, and has resided since at least October 2010.

5. On March 2, 2012, SMITH was arrested and charged with multiple probation violations and has been incarcerated since that time. On August 24, 2012, SMITH entered a guilty plea to the violations of probation in the Western District of New York before the Honorable Richard J. Arcara. On September 14, 2012, SMITH is scheduled to be sentenced related to the violations of probation. The conduct charged in this Criminal Complaint is distinct from the conduct which is the subject of SMITH's violations of probation.

6. The instant charges involve SMITH's involvement in a fraudulent loan scheme, whereby Penfed was induced to issue loans under the pretense that an automobile was to be purchased by the borrower, when in fact, no automobile was ever intended to be purchased, and ultimately, no automobile was purchased. The investigation to date has revealed that SMITH has been involved in said scheme to obtain fraudulent automobile loans through Penfed, in the names of various individuals, from approximately August 2011 through March 2012. Based on interviews with various borrowers named in the Penfed applications, Penfed loan documents, and my review of some of SMITH's correspondence with others, it appears that the scheme aimed to recruit individuals who needed money, but were having trouble obtaining loans. Fraudulent loan applications

would then be submitted to Penfed using the names and identifiers of these individuals, purporting to obtain financing for the purchase of certain vehicles from certain car dealerships.

7. As part of the scheme, Smith directed individuals to open various bank accounts, on his behalf, in the names of several different shell companies, for purposes of obtaining and disbursing the fraudulently obtained automobile loan proceeds. The accounts were opened in names corresponding with the "car dealerships" given to Penfed as part of the loan process, so that the funds released by Penfed were funneled to bank accounts controlled by SMITH, and to which SMITH had access.

8. In December 2011, a loan application in the name of C.K., was submitted to Penfed¹. Through the application and supporting documentation, Penfed was led to believe that C.K. was in the process of purchasing a 2008 Audi from Carmax Superstores², for approximately \$41,000. Another individual involved in the scheme obtained a title and purchase order for the Audi from Carmax

¹ I believe this application to have been submitted by another individual involved in the scheme, and not by SMITH himself.

² Carmax Superstores is the largest retail used car dealership in the U.S., and has in excess of 100 locations throughout the U.S.

Superstores, and supplied the documents to Penfed, in support of the loan application, despite the fact that C.K. never intended to purchase the vehicle. Believing that C.K. was going to use the loan proceeds to purchase the Audi from Carmax Superstores, Penfed funded the loan in the amount of \$41,000. Penfed issued a two party check made payable to Carmax and C.K. This check was mailed to SMITH to deposit into a bank account that SMITH controlled at Citizens Bank in the name of Carmax Services. This bank account was opened at SMITH's direction in the Western District of New York for the purpose of depositing fraudulently obtained automobile loan proceeds, to include the proceeds of C.K.'s loan.

9. Through interviews, a review of financial records, the review of evidence obtained as a result of court authorized search warrants, the review of monitored telephone calls originated by SMITH from jail and other investigative techniques, it has been determined that the flow of the aforementioned fraudulently obtained loan proceeds was as follows: On or about February 10, 2012, SMITH's assistant, hereafter referred to as Associate 1, at the direction of SMITH, opened a bank account in the name of Carmax Services, with account number ending in 0322, at Citizens Bank in the Western District of New York. Associate 1 was the only authorized signer on this bank account. Based on the representations in the loan application, Penfed approved the loan,

and on March 1, 2012, check number 1752950 drawn on Penfed, in the amount of \$41,000, dated February 14, 2012, and payable to Carmax and C.K., was deposited into Citizens Bank account number ending in 0322. As previously noted, this check represented the proceeds of a loan for the purchase of an automobile by C.K. It was never the intent of SMITH, C.K. or others to purchase an automobile from Carmax Superstores or elsewhere with these loan proceeds.

10. On March 2, 2012, SMITH was arrested and incarcerated related to the aforementioned probation violations. While incarcerated, SMITH directed others to aid him with the dissipation of the proceeds of the automobile loan in the name of C.K. From jail, SMITH wrote three checks, dated March 12, 2012, drawn on Citizens Bank account number ending in 0322, to three different individuals, and forged the name of Associate 1 as the authorized signer on these checks. Check number 0994 was payable to a known associate of SMITH, hereafter referred to as Associate 2, for \$1,000; check number 0995 was payable to a known associate of SMITH, hereafter referred to as Associate 3, for \$9,000; and check number 0996 was payable to another known associate of SMITH, hereafter referred to as Associate 4, for \$24,000. SMITH then instructed Associate 3 and Associate 4 to launder the majority of these proceeds to SMITH's mother. It should be noted that on April 19, 2012, through a court authorized search warrant executed at the

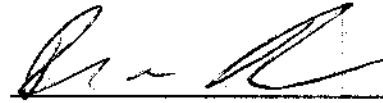
residence of SMITH's mother, a portion of the fraudulently obtained proceeds from this loan was seized.

11. Penfed has confirmed that no payments have been made on C.K.'s loan. Records obtained from the Department of Motor Vehicles and from Carmax Superstores confirm that the Audi was never purchased by C.K. Because the vehicle was never purchased, Penfed was never able to perfect its security interest in the loan.

12. My investigation has also revealed that SMITH has been involved in other fraud schemes from approximately February 2010 through March 2012 that encompass numerous victims, including multiple financial institutions.

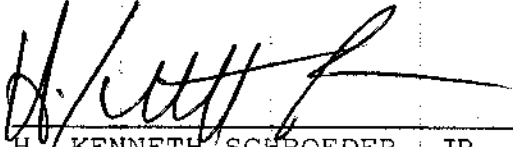
WHEREFORE, the undersigned respectfully requests that the Court authorize a Criminal Complaint charging Brian Avery Smith with knowingly executing a scheme to defraud Pentagon Federal Credit Union and with knowingly executing a scheme and artifice to obtain money, funds, and credits, owned by and under the custody and control of Pentagon Federal Credit Union by means of false and fraudulent pretenses, in violation of Title 18, United States Code, Sections 1344(1) and 1344(2). Bank Fraud is a matter within the

jurisdiction of the executive branch of the United States
Government.



Brendan M. Donlan
Special Agent
Federal Bureau of Investigation

Sworn to me this 13th day of
September, 2012.



H. KENNETH SCHROEDER, JR.
United States Magistrate Judge